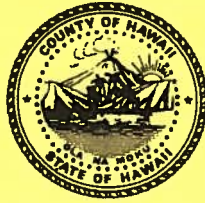


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
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County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

May 17, 2012

S.V. (Bud) Quitiquit
Tom Quitiquit Chee Watts & Yamamoto, LLP
75-1000 Henry Street, Suite 208
Kailua-Kona, HI 96740

To Whom It May Concern:

SUBJECT: Unauthorized Development in the Special Management Area (SMA)
Tax Map Key: (3) 8-2-006:027, Kahauloa 1st, South Kona, Hawai'i

On April 10, 2012, staff conducted a site inspection and met with Sandy Esperanza, whom, we understand, is a caretaker of the subject property. Staff observed that unauthorized development had occurred on the subject property. Photographs showing these observations are enclosed for your information.

The site inspection and further investigation has revealed the following information:

1. The property is located within the State Land Use Urban District and the County's Single-Family (RS-15) Zoning District.
2. The property is located entirely within the Special Management Area (SMA) and has frontage along the shoreline.
3. The property comprises a total of approximately 32,587 square feet of land.
4. Real Property Tax records show B P Bishop Estate Trustees, Henry A Leslie Sr, and Bill Healy Foundation as the owners of record.
5. A fence and adjoining rock wall have been constructed.
6. A portable toilet has been placed within a surrounding permanent structure.
7. Irrigation and landscaping lines have been installed throughout the property.

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8. Fill material including soil and rock has been placed on the property.
9. It appears that sand and several rock berms have been placed along the shoreline, but at this time we are unable to determine if those were intentionally placed or were naturally deposited during the March 11, 2011 Tsunami.
10. Some activity has occurred within the minimum forty-foot shoreline setback area as defined in Planning Department (PD) Rule 11.
11. The property is currently being used for shoreline public access.

Special Management Area Requirements:

For your information, Planning Commission (PC) Rule 9-8 (a), Permits Required for Development, states that *"No development shall be allowed within the Special Management Area without obtaining a permit in accordance with this rule."*

Further, PC Rule 9-10 (a), Assessment, states the following:

"The Department shall assess all uses, activities or operations proposed in the Special Management Area except in cases in which the applicant determines that the proposed use, activity or operation will:

- a) exceed \$500,000 in valuation; or*
- b) have a cumulative negative impact, or a significant adverse environmental or ecological effect on the Special Management Area. In this case, the assessment procedures may be waived and the applicant shall petition the Commission for a Special Management Area Use Permit pursuant to Section 9-11."*

According to our files, there was no SMA assessment or permit approval for the aforementioned activities. Since the development or activities must be approved **prior** to occurring, the Planning Director finds that you are in violation of PC Rule 9-8(a).

Shoreline Setback Area Requirements:

In addition, Planning Department (PD) Rule 11-7 (a) (4), Structures or Activities Permitted within the Shoreline Setback Area, states that *"A minor structure or activity approved in accordance with Section 11-8 may be permitted within the shoreline setback area provided written clearance is secured from the Planning Department."*

Further, according to PD Rule 11-8, *"A minor structure or activity proposed in the shoreline setback area shall not need a shoreline setback variance if the Planning Department determines*

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that it would not affect beach processes or artificially fix the shoreline and would not interfere with public access or public views to and along the shoreline.”

According to our files, there was no written determination or shoreline setback variance issued for any activity within the shoreline setback area. Since the development or activities must receive written clearance **prior** to occurring, the Planning Director finds that you are also in violation of Planning Department Rule 11-7(a).

Compliance with Environmental Impact Statement Regulations (Chapter 343, HRS):

According to Hawai‘i Revised Statutes (HRS) Chapter 343-5, an environmental assessment shall be required for actions that propose any use within a shoreline area.

However, the unauthorized development within the shoreline area may be able to qualify as exempt from the requirements of Chapter 343. Hawai‘i Administrative Rules (HAR), Title 11, Chapter 200, Environmental Impact Statement Rules, lists certain classes of action that may be exempt from the preparation of an environmental assessment. Among the list of exempt classes of action listed in HAR Title 11, Chapter 200 is:

- *11-200-8(A)4 Minor alterations in the conditions of land, water, or vegetation;*
- *11-200-8(A)6 Construction or placement of minor structures accessory to existing facilities;*

Public Access:

During the review of a proposal within the SMA, we are responsible for implementing the SMA Guidelines provided in HRS 205A-26 (3) (C), specifically *the authority shall seek to minimize, where reasonable any development which would reduce or impose restrictions upon public access to tidal and submerged lands, beaches, etc.* Therefore, we encourage and in many cases require that property owners located along a shoreline with known public use continue to allow shoreline access. In this case, the property is already being used by the public for shoreline access.

Permitting Requirements:

Because of the willingness and cooperation shown by the caretaker during the site inspection, the Planning Director has decided to forgo an official Notice of Violation.

This letter serves to notify you of the following permitting requirements relating to the development on the subject parcel:

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1. Per PC Rule 9-10, a complete SMA Use Permit Assessment Application (SMAA), including a shoreline survey, shall be submitted for the unauthorized work performed, including any future development plans for the subject parcel. This form has been enclosed for your use and convenience.
2. The SMAA shall include a written request for the approval of minor structures and activities within the shoreline area, per PD Rule 11-8. Please include any information and photographs regarding the placement of the sand and rock berms near the shoreline.
3. The SMAA shall address compliance with HRS Chapter 343-5. An environmental assessment, prepared in accordance with the requirements of Chapter 343, Hawai'i Revised Statutes (HRS) and Title 11, Chapter 200, Hawai'i Administrative Rules, shall accompany the filing of the SMA Assessment Application. However, if you believe the development may be eligible for the previously mentioned exempt classes of action, please provide a written description to substantiate that request.
4. The SMAA shall include a description of the shoreline public access that includes the hours, rules and regulations, signage, etc. We have enclosed a Shoreline Public Access Plan Guide for your use as you draft the description. Please feel free to contact Larry Brown of this office at (808) 961-8135 with any questions regarding the public access.

It is important to understand that should you continue to do work on the subject property without the required permits, we will pursue a Notice of Violation, which could include civil fines of up to \$100,000. In addition, there are other State and County agencies that may have jurisdiction over this property. A copy of this letter is being forwarded to those pertinent agencies. Please note that those agencies may pursue additional enforcement and corrective actions.

Thank you for your attention to this matter. We look forward to working with you towards resolution. If you have any questions, feel free to contact Bethany Morrison of this office at (808) 961-8138.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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Tom Quitiquit Chee Watts & Yamamoto, LLP
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Enclosure: Site Photos for TMK: (3) 8-2-006:027
Special Management Area Use Permit Assessment Application
Shoreline Public Access Plan Guide

cc w/ photos only: Bill Healy Foundation
c/o Bill Healy
14075 NW Old Germantown Road
Portland, OR 97231

B P Bishop Estate Trustees
Kamehameha Schools
P.O. Box 3466
Honolulu, HI 96801

Mr. Henry A Leslie, Sr
RR 1 Box 179
Captain Cook, HI 96704

Mr. Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands
State of Hawaii Department of Land and Natural Resources
P.O. Box 621
Honolulu, HI 96809

cc ltr only: Mr. Warren Lee, Director Department of Public Works
Long Range Division
Kona Planning Office